

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 36505

STATE OF IDAHO,)	2010 Unpublished Opinion No. 425
)	
Plaintiff-Respondent,)	Filed: April 9, 2010
)	
v.)	Stephen W. Kenyon, Clerk
)	
JOSE LOPEZ,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Cheri C. Copsey, District Judge.

Order of restitution, affirmed.

Molly J. Huskey, State Appellate Public Defender; Jason C. Pintler, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

MELANSON, Judge

Jose Lopez appeals from the district court's order of restitution. For the reasons set forth below, we affirm.

In 2001, Lopez was convicted of aggravated battery with an enhancement for use of a firearm in the commission of a felony and sentenced to a unified term of twenty years, with a minimum period of confinement of five years. The district court also imposed restitution in the amount of \$28,011.29. This amount was later corrected to \$25,205.67. After successfully filing a direct appeal resulting in his judgment of conviction being vacated, Lopez pled guilty to aggravated battery and the state dismissed the firearm enhancement. The district court sentenced Lopez to a unified term of eleven years, with a minimum period of confinement of six years. The district court suspended Lopez's sentence and placed him on probation for eleven years. The district court again ordered restitution in the amount of \$28,011.29. Approximately three years later, Lopez filed a motion to reduce his restitution. The district court denied the motion

for lack of jurisdiction, but reduced the amount to reflect the corrected amount which was originally ordered. After factoring in the payments which Lopez had already made, the district court entered an order of restitution for the balance of \$22,518.61. Lopez appeals.

Lopez concedes that, through his trial counsel, he agreed to pay the amount of restitution which was ordered. The doctrine of invited error applies to estop a party from asserting an error when his or her own conduct induces the commission of the error. *State v. Atkinson*, 124 Idaho 816, 819, 864 P.2d 654, 657 (Ct. App. 1993). One may not complain of errors one has consented to or acquiesced in. *State v. Caudill*, 109 Idaho 222, 226, 706 P.2d 456, 460 (1985); *State v. Lee*, 131 Idaho 600, 605, 961 P.2d 1203, 1208 (Ct. App. 1998). In short, invited errors are not reversible. *State v. Gittins*, 129 Idaho 54, 58, 921 P.2d 754, 758 (Ct. App. 1996). This doctrine applies to sentencing decisions as well as rulings made during trial. *State v. Griffith*, 110 Idaho 613, 614, 716 P.2d 1385, 1386 (Ct. App. 1986). In this case, Lopez concedes that he acquiesced to the amount of restitution which was ultimately ordered by the district court. Therefore, Lopez is estopped from arguing that the restitution award constituted an abuse of discretion.

While admitting that trial counsel acquiesced to the amount of restitution ordered, Lopez argues that the district court's order still constituted an abuse of discretion because the amount of restitution was excessive. However, this argument does not prevent the application of the invited error doctrine. Lopez acquiesced in the amount of restitution ordered and cannot now argue that it was excessive. Even if we reviewed the amount of restitution ordered, Lopez has failed to show that he is entitled to relief. The decision whether to require restitution is committed to the trial court's sound discretion. *State v. Hamilton*, 129 Idaho 938, 942, 935 P.2d 201, 205 (Ct. App. 1997). When a trial court's discretionary decision is reviewed on appeal, the appellate court conducts a multi-tiered inquiry to determine: (1) whether the lower court correctly perceived the issue as one of discretion; (2) whether the lower court acted within the boundaries of such discretion and consistently with any legal standards applicable to the specific choices before it; and (3) whether the lower court reached its decision by an exercise of reason. *State v. Hedger*, 115 Idaho 598, 600, 768 P.2d 1331, 1333 (1989).

A trial court shall order restitution when the defendant is found guilty of a crime which results in economic loss to the victim, unless the court determines restitution is inappropriate or undesirable. I.C. § 19-5304(2); *State v. Bybee*, 115 Idaho 541, 543, 768 P.2d 804, 806 (Ct. App. 1989). In determining whether restitution should be ordered and the amount of restitution, the

trial court shall consider the amount of economic loss sustained by the victim, the financial resources, needs and earning ability of the defendant, and other factors that the court deems appropriate. I.C. § 19-5304(7).

In this case, Lopez does not contend that the district court erred in the calculation of the amount of restitution owed, and he did not claim a financial hardship or inability to make restitution payments. Rather, Lopez's sole contention was that the amount of restitution he owed prevented him from purchasing a home, thus contributing to his rehabilitation. Lopez's efforts to become a more productive member of society and purchase a home for his family are laudable. However, his inability to purchase a home because he must pay restitution does not establish an abuse of the trial court's discretion. Therefore, the district court's order of restitution was not excessive and did not constitute an abuse of discretion. Accordingly, the district court's order of restitution is affirmed.

Chief Judge LANSING and Judge GRATTON, **CONCUR.**